

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AIU INSURANCE COMPANY,

Plaintiff,

No. C 07-5491 PJH

v.

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

ACCEPTANCE INSURANCE COMPANY,
et al.,

Defendants.

The motion of defendants American Safety Risk Retention Group, Inc. ("ASRRG") and American Safety Indemnity Company ("ASIC") for summary judgment came on for hearing before this court on December 22, 2010. Plaintiff AIU Insurance Company ("AIU") appeared by its counsel Laura Ruetters, and ASRRG and ASIC appeared by their counsel David Blau. Having read the parties' papers and carefully considered their arguments, the court hereby GRANTS the motion as follows for the reasons stated at the hearing.

The second amended complaint asserts a single cause of action against ASRRG and ASIC – a claim for declaratory relief seeking a judicial declaration as to the duties of AIU, ASRRG, and ASIC with regard to insurance coverage, in connection with claims asserted against Rylock Company, Ltd. ("the Underlying Actions").

The Declaratory Judgment Act provides in relevant part: "In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). The "case or controversy" requirement shields federal courts from being

1 drawn into disputes regarding abstract or hypothetical cases, as federal courts have no
2 power to render advisory opinions as to what the law ought to be or affecting a dispute that
3 has not yet arisen. See Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U.S. 227,
4 240 (1937).

5 In general, an insurer's declaratory action regarding its duty to defend and indemnify
6 may be sufficiently ripe, even when the underlying liability action has not yet proceeded to
7 judgment. See, e.g., Maryland Casualty v. Pacific Coal & Oil Co., 312 U.S. 270 (1941). As
8 long as the parties' dispute is of sufficient "immediacy and reality" to constitute a
9 "controversy" in the constitutional sense, the exercise of federal power is specifically
10 authorized under the Declaratory Judgment Act. Aetna, 300 U.S. at 240. If, however, a
11 case is not ripe for review, then there is no case or controversy and the court cannot
12 exercise subject-matter jurisdiction over the action. See American States Ins. Co. v.
13 Kearns, 15 F.3d 142, 143 (9th Cir. 1994).

14 In opposing AIU's previous motion for summary judgment, ASRRG and ASIC argued
15 that this declaratory relief action was improper because AIU could not establish the
16 existence of a case or controversy ripe for judicial review, and could not show that it had
17 standing to seek judicial review of any such controversy. In the September 30, 2010 order
18 denying AIU's motion, the court found that "for purposes of declaratory relief, AIU has
19 adequately alleged a 'case or controversy'" and that AIU did not need to make any further
20 showing of "injury in fact."

21 Now, in support of their own motion for summary judgment, ASRRG and ASIC again
22 assert that AIU cannot provide sufficient evidence to establish the existence of a "case or
23 controversy," and also contend that what AIU is seeking amounts to a purely advisory
24 opinion. In addition, ASRRG and ASIC argue that equitable contribution is the appropriate
25 means of equitably allocating a claim depending on the coverage afforded by each of the
26 carriers' policies and the specific facts and liability presented.

27 On an issue where the nonmoving party will bear the burden of proof at trial, the
28 party seeking summary judgment can prevail merely by pointing out to the district court that

1 there is an absence of evidence to support the nonmoving party's case. Celotex Corp. v.
2 Catrett, 477 U.S. 317, 324-25 (1986). If the moving party meets its initial burden, the
3 opposing party must then set forth specific facts showing that there is some genuine issue
4 for trial in order to defeat the motion. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
5 250 (1986).

6 As stated at the hearing, the court finds that AIU has failed to provide evidence
7 showing that the parties' dispute is ripe for review. The court finds further that AIU is in
8 effect seeking an advisory opinion. Accordingly, defendants' motion for summary judgment
9 is GRANTED. The dismissal of AIU's claim for declaratory relief against ASRRG and ASIC
10 is without prejudice to refiling it once the claim is ripe.

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12 **IT IS SO ORDERED.**

13 Dated: December 23, 2010



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15 PHYLLIS J. HAMILTON
16 United States District Judge
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